

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

Alternative Insurance Services, Inc.
System ID No. 0010772

Enforcement Case No. 08-6926

John Flaherty

Respondents

**ORDER OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING**

Issued and entered
On 9/17/08 2008
by Stephen R. Hilker
Chief Deputy Commissioner

BACKGROUND

The staff of the Office of Financial and Insurance Regulation (OFIR) has petitioned the Chief Deputy Commissioner of the Office of Financial and Insurance Regulation for an Order of Summary Suspension. Based on the Staff's Petition for Summary Suspension, the Chief Deputy Commissioner finds and concludes that, if the facts set forth in Staff's Petition are true, then:

1. The alleged conduct of Respondents is illegal and in violation of the Michigan Insurance Code as follows:

1.
 - a. Respondent Alternative Insurance Services, Inc. ("AIS") is an insurance agency licensed as an insurance producer within the State of Michigan with qualifications in property, casualty, and surplus lines.
 - b. Respondent Flaherty is not licensed to sell, solicit, or negotiate insurance in the State of Michigan.
 - c. Respondent Flaherty owns and operates AIS.
 - d. On July 22, 2008, Respondent Flaherty by and through Respondent AIS received a \$83,885.00 check from writing agents, Nickel & Saph, Inc., as premium payments for the renewal of insurance policies for the City of Fraser and Sanilac County.
 - e. On or about July 23, 2008, AIS negotiated the check at Comerica Bank and the money was placed into an account held by AIS.
 - f. The \$83,885.00 surplus lines premium should have been remitted by AIS to W. H. Greene, a surplus lines broker in the State of New York, and then forwarded to the companies underwriting the municipalities, Merchant's Mutual Insurance (Sanilac) and American Alternative Insurance Corp (Frasier).
 - g. Respondents Flaherty and AIS failed to remit the premium money to W.H. Greene.
 - h. On September 2, 2008, Mr. Flaherty sent an email to Nickel & Saph, Inc., stating AIS never sent the premium money to W.H. Greene and that the City of Fraser and Sanilac County had been issued notices of cancellation.

- i. AIS received money in its fiduciary capacity as an agent, but failed to remit the money to whom it was owed in a timely manner, which is a violation of Section 1207(1) of the Code.
 - j. AIS improperly withheld, misappropriated, or converted money received in the course of doing insurance business in the State of Michigan, which is a violation of Section 1239(1)(d) of the Code.
 - k. AIS used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the State of Michigan, which is a violation of Section 1239(1)(h) of the Code.
2. The alleged activities of the Respondents present a serious and immediate threat to the public's health, safety and welfare, and emergency action is clearly required to protect the public's interest. Respondent AIS has violated its fiduciary duty by receiving premium payments from insurance consumers, leading these consumers to believe they had insurance coverage when, in fact, they did not, and by failing to remit the premiums to the insurers to whom they are owed as set forth in the Petition For Summary Suspension, which is attached and incorporated by reference. This activity also exposes insurers to substantial financial loss in the event that claims are submitted by insurance consumers for whom no premiums were received.
3. The immediate harm to the public presented by the continuing operation of Respondent AIS, as alleged, is much greater than the potential harm to Respondent AIS, which might be occasioned by summary action against Respondent AIS's

license and authority. Specifically, insurance consumers and insurers are at risk of substantial financial loss due to Respondent AIS's failure to remit payment.

4. Due process requirements of the Michigan Insurance Code and the Administrative Procedures Act require that a licensee subject to summary disciplinary action be provided with an opportunity for immediate hearing. A summary suspension of Respondent AIS's insurance producer license and authority is authorized by Section 92 of the Administrative Procedures Act of 1969, as amended, being MCL 24.292 and in Section 1242(4) of the Code, MCL 500.1242(4).


ORDER

Therefore, it is ORDERED that:

1. All insurance producer licenses and authority of Respondent Alternative Insurance Services, Inc. are hereby **SUMMARILY SUSPENDED**, effective upon service of this Order on Respondent Alternative Insurance Services, Inc.
2. If requested, a hearing on this matter shall be held within a reasonable time, but in not later than 20 days after service of this Order, unless Respondent requests a later date. The hearing shall address the following issues: a) the factual allegations set forth in the Staff's Petition for Summary Suspension, b) the continuation of this Order of Summary Suspension, c) the revocation of the insurance producer license of Alternative Insurance Services, Inc., and d) the assessment of such fines and restitution as may be authorized under the Insurance Code provisions applicable to this matter.
3. An administrative law judge from the State Office of Administrative Hearings and Rules shall preside over the hearing, if a hearing is requested.

4. A copy of this Order shall be served upon Respondents immediately. This Order of Summary Suspension is effective upon the date of such service.

The Commissioner specifically retains jurisdiction of the matters contained herein and the authority to issue such further order(s) as he shall deem just, necessary and appropriate.



Stephen R. Hilker
Chief Deputy Commissioner

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
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In the matter of:

**Alternative Insurance Services, Inc.
System ID No. 0010772**

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John Flaherty

Respondents

PETITION FOR SUMMARY SUSPENSION

The staff of the Office of Financial and Insurance Regulation (OFIR) alleges that the following facts are true and correct. Staff believes that those facts constitute activities of the Respondents that present a serious and immediate threat to the public's health, safety and welfare. Staff believes that emergency action is clearly required to protect the public's interest. Staff believes that the immediate harm to the public presented by the continuing operation of the Respondents, as alleged below, is much greater than the potential harm to the Respondents that might be occasioned by summary action against Respondent Alternative Insurance Services' license and/or authority.

GENERAL ALLEGATIONS AND OVERVIEW

It is alleged that the following statements are true:

1. At all pertinent times, Respondent Alternative Insurance Services, Inc. ("AIS") was an insurance agency licensed as an insurance producer within the State of Michigan with qualifications in property, casualty, and surplus lines.
2. At all pertinent times, Respondent Flaherty was not licensed to sell, solicit, or negotiate insurance in the State of Michigan.
3. At all pertinent times, Respondent Flaherty owned and operated AIS.
4. Respondent AIS knew or had reason to know that Section 1207(1) of the Michigan Insurance Code (Code), MCL 500.1207(1), provides that an agent shall be a fiduciary for all moneys received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
5. Respondents further knew or had reason to know that Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), provides that the commissioner may place on probation, suspend, and revoke an insurance producer's license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
6. Respondents further knew or had reason to know that Section 1239(1)(h) of the Code, MCL 500.1239(1)(h), provides that the commissioner may place on probation, suspend, and revoke an insurance producer's license for using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
7. On July 22, 2008, Respondent Flaherty, by and through Respondent AIS, received a \$83,885.00 check from writing agents, Nickel & Saph, Inc., as premium payments for the renewal of insurance policies for the City of Fraser and Sanilac County.
8. On or about July 23, 2008, Respondents Flaherty and AIS negotiated the check at Comerica Bank and the money was placed into an account held by AIS.
9. The \$83,885.00 surplus lines premium should have been remitted by AIS to W. H. Greene, a surplus lines broker in the State of New York, and then forwarded to the companies underwriting the municipalities, Merchant's Mutual Insurance (Sanilac) and American Alternative Insurance Corp (Fraser).

10. Respondents Flaherty and AIS failed to remit the premium money to W.H. Greene.
11. On September 2, 2008, Mr. Flaherty sent an email to Nickel & Saph, Inc., stating AIS never sent to the premium money to W.H. Greene and that the City of Fraser and Sanilac County had been issued notices of cancellation.
12. AIS received money in its fiduciary capacity as an agent, but failed to remit the money to whom it was owed in a timely manner, which is a violation of Section 1207(1) of the Code.
13. AIS improperly withheld, misappropriated, or converted money received in the course of doing insurance business in the State of Michigan, which is a violation of Section 1239(1)(d) of the Code.
14. AIS used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in the State of Michigan, which is a violation of Section 1239(1)(h) of the Code.
15. Due to Respondent AIS violating Sections 1207(1), 1239(1)(d) and (h) of the Code, MCL 1207(1), 1239(1)(d), and (h), and the potential that AIS will continue to violate the Code and cause harm to the public, the Commissioner needs to take emergency action to protect the public by issuing an Order of Summary Suspension.

APPLICABLE LAW

The following provisions of the Michigan Insurance Code are applicable to this case:

Section 1207(1) of the Insurance Code of 1956, as amended, MCL 500.1207, which provides:

(1) An agent shall be a fiduciary for all moneys received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. An agent shall not accept payment of a premium for a medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

Section 1239(1) of the Insurance Code of 1956, as amended, MCL 500.1239, which provides in part:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

APPLICABLE PENALTIES

Violations of the Insurance Code may be the basis for discipline against Respondents. If, after a formal hearing, the Commissioner determines that the acts, methods, or practices described in the Factual Allegations are true and correct and constitute violations of the provisions of the law cited in the Applicable Law section, the Commissioner may take any or all of the actions cited below.

Section 1239(1) of the Insurance Code of 1956, as amended, MCL 500.1239, which provides in part:

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(4) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after hearing, be subject to a civil fine under section 1244.

(5) In addition to the penalties under this section, the commissioner may enforce the provisions of and impose any penalty or remedy authorized by this act against any person who is under investigation for or charged with a violation of this act even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 1242(2) of the Insurance Code of 1956, as amended, MCL 500.1242(2), which provides:

The commissioner, after notice and opportunity for a hearing, may suspend or revoke the license of an agent, solicitor, insurance counselor or adjuster who fails to maintain the standards required for initial licensing or who violates any provision of this act.

Section 1242(4) of the Insurance Code of 1956, as amended, MCL 500.1242(4), which provides:

(4) Without prior hearing, the commissioner may order summary suspension of a license if he or she finds that protection of the public requires emergency action and incorporates this finding in his or her order. The suspension shall be effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later. If requested, the commissioner shall conduct a hearing on the suspension within a reasonable time but not later than 20 days after the effective date of the summary suspension unless the person whose license is suspended requests a later date. At the hearing, the commissioner shall determine if the suspension should be continued or if the suspension should be withdrawn, and, if proper notice is given, may determine if the license should be revoked. The commissioner shall announce his or her decision within 30 days after conclusion of the hearing. The suspension shall continue until the decision is announced.

Section 1244 of the Insurance Code of 1956, as amended, MCL 500.1244, which provides:

(1) If the commissioner finds that a person has violated this chapter, after an opportunity for a hearing pursuant to the administrative procedures act of 1969, Public Act No. 306, MCL 24.201 to 24.328, the commissioner shall reduce the findings and decision to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from the violation. In addition, the commissioner may order any of the following:

(a) Payment of a civil fine of not more than \$500.00 for each violation. However, if the person knew or reasonably should have known that he or she was in violation of this chapter, the commissioner may order the payment of a civil fine of not more than \$2,500.00 for each violation. However, an order of the commissioner under this subsection shall not require the payment of civil fines exceeding \$25,000.00. A fine collected under this subdivision shall be turned over to the state treasurer and credited to the general fund of the state.

(b) A refund of any overcharges.

(c) That restitution be made to the insured or other claimant to cover incurred losses, damages, or other harm attributable to the acts of the person which are found to be in violation of this chapter.

(d) The suspension or revocation of the person's license.

(2) The commissioner may by order, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, an order issued under this section, if in the opinion of the commissioner conditions of fact or of law have changed to require that action, or if the public interest requires that action.

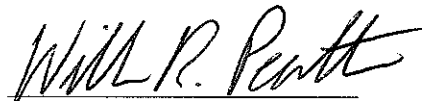
(3) If a person knowingly violates a cease and desist order under this chapter and has been given notice and an opportunity for a hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commissioner may order a civil fine of not more than \$10,000.00 for each violation, or a suspension or revocation of the person's license, or both. An order issued by the commissioner pursuant to this subsection shall not require the payment of civil fines exceeding \$50,000.00. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(4) The commissioner may apply to the circuit court of Ingham County for an order of the court enjoining a violation of this chapter.

ACTION REQUESTED

Based on the allegations set forth above and the belief that such activity is an ongoing practice detrimental to policyholders, prospective policyholders, and insurers whom Respondents represents as an appointed agent, Staff believes that emergency action by the Chief Deputy Commissioner is required to protect the public from the ongoing activities of Respondents Alternative Insurance Services, Inc. and John Flaherty which have violate the Michigan Insurance Code. Staff therefore petitions the Chief Deputy Commissioner to:

1. Summarily suspend the insurance producer license of Alternative Insurance Services, Inc.
2. If requested, issue an order for notice of hearing, which shall address a) the factual allegations set forth above, b) the continuation of the order of summary suspension, c) the revocation of the insurance producer license of Alternative Insurance Services, Inc., and d) the assessment of such fines and restitution as may be authorized under the Code provisions applicable to this matter.
3. Designate that an administrative law judge from the State Office of Administrative Hearings and Rules preside over the hearing, if one is requested.



William R. Peattie
Attorney for OFIR Staff

Date: 9/17/08

RIGHTS AND PROCEDURES IN DIVISION OF INSURANCE HEARINGS

If requested, the hearing will be held under the legal authority and jurisdiction granted the Commissioner of Financial and Insurance Regulation by the Michigan Insurance Code, and in accordance with provisions of the Administrative Procedures Act of 1969, as amended ("APA"), MCL 24.201 et seq., Procedure for Conducting Hearings Held by the Commissioner of Financial and Insurance Regulation, Administrative Code 1979, R 500.2101 et seq., and other procedural provisions of Michigan law that are appropriate.

COUNSEL: A party has the right to be represented by counsel. If a party is represented, counsel is directed to file an appearance promptly with the administrative law judge. Appearances shall contain the counsel's full name, address, and telephone number. The

address provided will be the official address for service of documents regarding this matter.

When a party chooses to proceed without counsel, he or she will be held to the same standards as an attorney, including a reasonable knowledge of the rules of evidence as applied in nonjury circuit court civil cases, applicable provisions of the APA, and other relevant laws and procedures.

FAILURE TO APPEAR: If a party fails to appear at the hearing, and the hearing, has not been adjourned, the party in attendance may be permitted to proceed with its case and the Commissioner may issue a decision without the participation of the absent party. Failure to appear may also result in a final decision entered against the Respondent by default. If so, the allegations in the Complaint will be taken as true. Substantial penalties for the alleged misconduct, including fines and license revocation, may be ordered.

ADJOURNMENTS: No hearing shall be adjourned or continued, except upon an order of the Commissioner or the administrative law judge. All motions and requests for an adjournment, or a continuance, shall be in writing and shall concisely state the reasons why an adjournment or continuance is necessary. No motion or request for an adjournment or a continuance will be considered unless it is filed at least 5 days prior to the hearing date, except upon order of the Commissioner or the administrative law judge. This exception will be granted only upon a showing, that for reasons not within the control of the party making, the motion or request, the motion or request could not be filed within the time limit.

DISCOVERY: The parties may wish to meet with each other to exchange information and materials relevant and materials relevant to the hearing. The offices of the Insurance Bureau are available for this purpose. All records of a party relating to the subject matter of this hearing, which are not exempt from discovery, shall be made immediately available to every other party for inspection and copying.

MOTIONS: A party may file a motion with the administrative law judge at any stage in the case. All prehearing motions shall be in writing, shall be sent to each party with proof of service, and shall include the specific action requested and reasons for the action. A party may file a response to the motion within 7 days after receiving the motion.

EXHIBITS AND WITNESSES: A party has the right to call witnesses and to introduce physical and documentary evidence. Each party may cross-examine the witnesses called by the opposite party. An opportunity for redirect and recross-examination will also be provided. A party may submit rebuttal evidence. Each party may question or contest the admissibility of any exhibit. When an objection is raised the admission or an exhibit, the grounds for the objection shall be stated.

DECISION AND APPEAL: Unless the Commissioner immediately proceeds to a final decision in accordance with Section 81 of the APA, MCL 24.281, the administrative law judge for a case will issue a Proposal for Decision when the hearing and transcripts are

completed. The parties will usually be given 30 days to file exceptions to the Proposal for Decision. However, in cases involving summary suspension or matters of significant social and economic impact, the time period for filing exceptions may be shortened to meet the circumstances of a particular case. After the 30 days have elapsed, the Commissioner will issue a Final Decision. A Final Decision issued by the Commissioner may be appealed as provided in the applicable provisions of Michigan law.